

REMARKS

Applicants have carefully reviewed and considered the Office Action dated July 16, 2003 and the references cited therein. Applicants have amended claims 1, 2, 7, 8, 11, 15-17, 21, 22, 31, 32, 37, 38, 52 and 60 in order to improve their form. Applicants have also cancelled claims 27 and 39-51 without prejudice, and in particular, without prejudice to pursue such claims in continuation applications. After entry of these amendments, claims 1-26, 28-38 and 52-60 will be pending in this application. Applicants believe that the application is in condition for allowance. Accordingly, favorable reconsideration in light of the foregoing amendments and the following remarks is respectfully requested.

As an initial matter, applicants would like to thank the Examiner for the courtesy extended during the personal interview on October 1, 2003 and the subsequent telephone interview on January 5, 2004. One of the inventors, LeRoy G. Hagenbuch, and one of his attorneys, Gregory C. Bays, attended the October 1 personal interview along with Mr. Lance Krall of Philippi-Hagenbuch, Inc. The subsequent January 5 telephone interview only involved Mr. Bays and the Examiner. The October 1 personal interview was generally directed towards discussing the cited Caterpillar brochure (Caterpillar Inc., Product Division, Field Representative Information Release, N149F "769 Series B Truck") along with the SAE standard (SAEJ1363 NOV 95, "Capacity rating-dumper body and trailer body") and their applicability to the claimed invention. During the interview, Mr. Hagenbuch referred to various background materials on angles of repose and material density that showed that there is no set universal angle of repose for materials and that densities can vary widely between different materials. Mr. Hagenbuch also referred to a drawing created by Philippi-Hagenbuch, Inc. that showed the widely different effective body volumes that could be calculated for the Caterpillar 769B body disclosed in the Caterpillar brochure depending on the heaped load configuration that is used (e.g., 2:1 SAE heap, 1:1 heap, 1.7:1 heap, etc.).

At the time of the October 1 personal interview, agreement was not reached on the claims. However, the Examiner requested that applicants submit the various materials referenced during the interview in an IDS. Once the IDS materials were received by the Examiner, a subsequent telephone interview would be scheduled to discuss specifics regarding the claim language. The USPTO acknowledged (via return postcard) receipt of the IDS and cited materials on November 3, 2003. However, as of January 5, 2004, the IDS and cited materials had not made their way to the Examiner. Because of the impending due date for a response to the Office Action, applicants' attorney went forward with the personal interview with the Examiner on January 5 despite the absence of the IDS materials. During the January 5 interview, the Examiner indicated that he thought that the subject matter which

is now reflected in amended independent claims 1, 21, 31, 52 and 60 might be patentable. In view of the fact that the Examiner did not have access to the IDS materials during the January 5 interview, applicants respectfully request that the Examiner call the undersigned attorney once he has received the IDS materials if the Examiner does not feel that the application is in proper form for allowance. This would allow applicants to explain once again how the IDS materials illustrate the patentability of the claims.

In the Office Action, the Examiner rejected claims 1-15, 18-26, 28-37, 39-53 and 45-59 under 35 U.S.C. § 103 as obvious primarily in view of the combination of U.S. Patent 5,887,914 ("the '914 patent") and the Caterpillar brochure. The Examiner also indicated that claims 17, 27, 38 and 54 appeared allowable if rewritten in independent form. Applicants respectfully traverse the claim rejections.

Amended independent claims 1, 52 and 60 recite processes in which the data collected from the anticipated point of use (claims 1 and 60) or representative point of use (claim 52) includes information regarding the shape of an actual load in an existing vehicle body as the load extends upwards to the load top from at least two of a group consisting of the body front wall, the body rear edge or one of the body sidewalls. Similarly, amended independent claim 21 recites a process in which the data collected from the anticipated point of use includes information from which at least two angles of material repose of an actual load in an actual body can be determined. The collection of this data is based on applicants' observation that nearly all loads carried in vehicle bodies are asymmetric. Thus, to establish the asymmetrical configuration of the load, data must be collected on the shape of at least two sides of the load. Along with many other features of the present invention, this asymmetry is not recognized by the Caterpillar brochure, which discloses a 1.7:1 heaped load pattern on all sides of the body. Accordingly, the Caterpillar brochure does not teach or suggest the processes recited in claims 1, 21, 52, 60. The claims depending from claims 1, 21, 52 and 60 are also allowable for at least this same reason.

Independent claim 31 recites a process that includes the step of developing a three-dimensional volumetric load model that includes corner voids and a truncated peak. None of the cited references teach or suggest a process for designing a body including such a step. Accordingly, claim 31 and the claims depending therefrom are patentable over the cited prior art.

Applicants reiterate that the combination of the '914 patent and the Caterpillar brochure is not well taken. The flaws in the combination, particularly with respect to the Caterpillar brochure, have been explained in detail in applicants' responses to the previous

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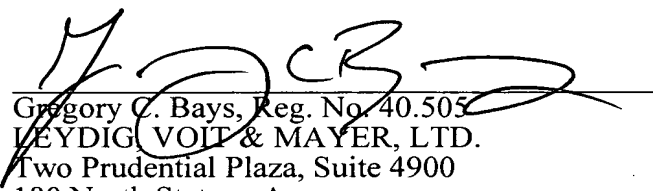
Office Action and in the various interviews with the Examiner. In sum, the Caterpillar brochure does not:

- Make any reference to the shape or form of the heap (e.g., conical vs. flat roof style)
- Make any reference to different angles of material repose for different materials
- Make any reference to different angles of material repose around the same load
- Make any reference to varying material densities
- Make any reference to varying the 1.7:1 heaped load pattern site-to-site
- Make any reference to volumetric ratings for the 1.7:1 heaped load pattern
- Make any reference to payload for the 1.7:1 heaped load pattern (both volume and density are necessary to calculate payload)

Accordingly, the pending rejections should be withdrawn.

The application is considered in good and proper form for allowance, and the Examiner is respectfully requested to pass this application to issue. Applicants again respectfully request that the Examiner call the undersigned attorney once he has received the IDS materials if the Examiner does not feel that the application is in proper form for allowance.

Respectfully submitted,



Gregory C. Bays, Reg. No. 40,505
LEYDIG, VOLT & MAYER, LTD.
Two Prudential Plaza, Suite 4900
180 North Stetson Avenue
Chicago, Illinois 60601-6780
(312) 616-5600 (telephone)
(312) 616-5700 (facsimile)

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Amendment or ROA - Regular (Revised 7/29/03)